an accused person was fined a total of $5,500 on two charges the fine was paid at once and in another case where a fine of $5,000 was imposed the fine was also paid forthwith. The total fines imposed last year amounted to $75,300. Of that huge sum only $19,500 was not paid and sentences of imprisonment of 28 months were served in lieu. It would seem to me, therefore, that there is ample evidence here of a huge gambling network. Large fines have been imposed and do not seem to have the slightest effect. It would seem to me that the only answer in cases of this nature where the accused was clearly shown to be an operator on a large scale and in addition has been previously convicted is to impose a prison sentence. The appeal, therefore, of the accused against conviction must be dismissed as also the appeal against sentence.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.*

KOH PENG MOH v. TAN CHWEE BOON

[O. C. J. (Tan Ah Tah J.) May 29, 1962]

[Singapore — Suit No. 789 of 1961]

Land Laws — Sale of land — "Subject to Contract" — Duplicate contract — Refusal of vendor to sign — No concluded contract — Claim for specific performance.

On May 8, 1961 in consideration of $500 the defendant granted to one HYK an option in writing to sell certain lands at Tanah Merah Kechil and Upper Bedok at the price of $79,000. On May 9, 1961 the plaintiff's solicitors wrote to the defendant to the effect that HYK had found a purchaser for the properties in question subject to contract. The letter also requested for the title deeds as the plaintiff's solicitors were acting for the intending purchaser. The defendant's solicitors wrote to the plaintiff's solicitors on May 17, 1961 enclosing the draft contract (in duplicate) and the title deed requesting the plaintiff's solicitors to treat the draft contract as fair copies for signature by their clients if they had no substantial amendment to make. On June 13, 1961 the plaintiff's solicitors wrote to the defendant's solicitors enclosing the schedule of deeds, and contract duly signed by the plaintiff together with a cheque for $7,900 being the 10% deposit money on the undertaking of the defendant to sign and return one copy of the contract to the plaintiff's solicitors. The defendant did not sign the contract. The defendant's solicitors wrote to the plaintiff's solicitors on June 14, 1961 returning the cheque for $7,900 and informing them that the defendant did not wish to sell the properties to the plaintiff. The letter further requested the return of the title deeds. Subsequently after further correspondence between the solicitors, the title deeds were returned to the defendant's solicitors. In this action the plaintiff claimed specific performance of the contract alleged to have been entered into by the defendant with the plaintiff.

Held: in Singapore when an offer to sell land is accepted "subject to contract" there are various methods whereby the parties could enter into a binding contract. As the defendant did not sign either of the 2 copies of the contract, an essential part of the method adopted was omitted in this case and there was no concluded contract between the parties.

Cases referred to:—

(1) *Eccles* v. *Bryant* [1947] 2 All E.R. 865.

(2) *Leeman* v. *Stocks* [1951] 1 All E.R. 1043.

ACTION.

L. A. J. Smith (*R. E. Redrup* with him) for the plaintiff.

R. C. H. Lim (*Yap Bor Choon* with him) for the respondent.

Cur. Adv. Vult.

Tan Ah Tah J.: In this action the plaintiff claims specific performance of a contract alleged to have been entered into by the defendant with the plaintiff for the sale to the plaintiff of certain lands situate at Tanah Merah Kechil and Upper Bedok.

The facts of the case are not in dispute. On the 8th May 1961, in consideration of the sum of $500 paid to him by one Heng Yong Khiang, the defendant granted to Heng Yong Khiang an option in writing to sell the property in question at the price of $79,000.

On the 9th May 1961 Messrs. Osborne-Jones & Co., who are the solicitors for the plaintiff, wrote to the defendant as follows:

> Your option dated 8th May, 1961 given to Mr. Heng Yong Khiang has been placed in our hands with instructions to inform you that he has found a purchaser for the same subject to contract at the price of $79,000 (Dollars Seventy-nine thousand).
>
> As we have instructions to act for the intending purchaser will you please forward us the deeds together with draft contract.

On the 17th May 1961 Messrs. Richard Chuan Hoe Lim & Co. sent a reply to Messrs. Osborne-Jones & Co. in the following terms:

> We act for Mr. Tan Chwee Boon who has handed to us your letter of the 9th instant addressed to him.
>
> We send you herewith title deeds relating to the above property on the usual undertaking together with draft contract, in duplicate, for approval. Kindly sign and return to us one copy of the enclosed Schedule of Deeds.
>
> If you have no substantial amendment to make to the draft contract please treat the same as fair copies for signature by your client.

On the 13th June 1961, after receiving a reminder dated 23rd May 1961, Messrs. Osborne-Jones & Co. wrote the following letter to Messrs. Richard Chuan Hoe Lim & Co.:

> With reference to your letter of the 23rd *ultimo*, we return herewith a copy of the schedule of deeds signed by us.
>
> We also return herewith the contract which has been signed by the purchaser. Our cheque for $7,900 representing the 10% deposit is enclosed herewith on your undertaking to return to us one copy of the said contract duly signed by the vendor.
>
> The delay in replying is due to our waiting for replies to our requisitions to the authorities.

The defendant did not sign the contract, having changed his mind about selling the property to the plaintiff, and on the 14th June 1961, Messrs. Richard Chuan Hoe Lim & Co. wrote to Messrs. Osborne-Jones & Co. in the following terms:

> Referring to your letter of the 13th instant, we are instructed by our client to and we do hereby return your cheque for $7,900 as our client does not wish to sell the property to your client. Will you, therefore, kindly return the title deeds to us.

Subsequently, after further correspondence between the solicitors, the title deeds relating to the property were returned to the defendant's solicitors and the present action was commenced.

Counsel for the defendant has admitted that the contract was signed by the plaintiff but he contends that as the defendant has not signed it there is no concluded contract. On the other hand, counsel for the plaintiff argues that when the defendant's solicitors wrote the letter of the 17th May 1961 to the plaintiff's solicitors enclosing the draft contract in duplicate, and stating that if they had no substantial amendments to make to the draft, the two copies were to be treated as fair copies for signature by the plaintiff, the defendant was in fact making an unconditional offer to the plaintiff and also specifying or indicating the method of acceptance. According to this argument, all the terms of the contract were contained in the documents, and when the plaintiff signed them he was accepting the offer in the manner indicated by the defendant. It therefore follows, says counsel for the plaintiff, that once the plaintiff had signed the two copies, both parties were bound by the contract.

In Singapore when an offer to sell land is accepted "subject to contract," there are various methods whereby the parties can enter into a binding contract. It is agreed by counsel on both sides that one of these methods is as follows:

> The vendor's solicitors will send to the purchaser's solicitors a draft contract in duplicate for approval.
>
> If the purchaser's solicitors approve the draft without amendment they will obtain the signature of the purchaser to both copies.
>
> The purchaser's solicitors then send both copies to the vendor's solicitors requesting the return of one copy with the vendor's signature on it and enclosing a deposit to account of the purchase price.
>
> The vendor's solicitors then obtain the signature of the vendor to both copies, date both copies, retain one copy and send the other copy to the purchaser's solicitors with a receipt for the deposit. The date of completion is inserted by the vendor's solicitors.

It is clear from the terms and tenor of the correspondence which I have read that both firms of solicitors contemplated that the method which I have just described would be followed. This is borne out by the fact that in writing the letter of the 13th June 1961 and enclosing a cheque for $7,900 representing the deposit of 10 per cent, the plaintiff's solicitors stated that the cheque was sent on the defendant's solicitors' undertaking to return to them one copy of the contract duly signed by the vendor. The plaintiff's solicitors in writing as they did were obviously depending upon the defendant's solicitors to obtain the signature of the defendant to the contract and to return one copy to them duly signed. As the defendant did not sign either of the two copies, it follows that an essential part of the method was omitted and that there was therefore no concluded contract between the parties.

It is relevant to observe that in *Eccles* v. *Bryant*[1] where a certain method of bringing a contract into existence was contemplated by the parties, the fact that an essential part of the method was not performed caused the English Court of Appeal to hold that there was no contract of which specific performance could be decreed. The headnote of that case reads as follows:

> "The vendors proposed to sell to the purchaser a house, and the terms set out in the preliminary correspondence were stated to be subject to contract. On June 11, 1946, the vendors' solicitors wrote to the purchaser's solicitors: 'Our clients have now signed their part of the contract herein and we are ready to exchange and shall be glad to hear from you.' On June 18, 1946, the purchaser's solicitors wrote to the vendors' solicitors: 'We accordingly enclose herewith the contract signed by our client and shall be glad to receive in exchange the part signed by your client.' The vendors changed their minds and did not send their part in exchange. On appeal by the vendors against a decree of specific performance granted to the purchaser,
>
> *Held:* the customary method by which a contract of the kind envisaged is brought into existence is by the exchange of the two parts of the contract, and until such exchange took place, notwithstanding that both parts were signed, there was no contract. It was clear from the correspondence that the usual method of contracting was contemplated, and, therefore, as no exchange did in fact take place, there was no contract of which specific performance could be decreed."

In support of his argument counsel for the plaintiff cited the case of *Leeman* v. *Stocks*[2] where a document which was signed by the purchaser but not signed by the vendor was held to constitute a sufficient memorandum to satisfy section 40(1) of the Law of Property Act, 1925 and to bind the vendor. That case can, however, be distinguished from the present case as it was the intention both of the purchaser and of the vendor's agent, who was an auctioneer, that the document, which had the vendor's name written on it, should be the final written record of the contract which had already been made between the parties, and moreover the evidence showed that when the auctioneer obtained the purchaser's signature thereto, neither the purchaser nor the auctioneer, acting on behalf of the vendor, ever intended any other signature to be added to the document.

On the facts of the present case I consider it unnecessary to deal with the question at what moment of time a contract such as the one under consideration comes into existence. The point was barely touched upon in the course of the argument as it did not really arise for determination.

In view of the conclusion which I have reached that there was no concluded contract between the parties, the plaintiff's claim for specific performance must fail. There will be judgment for the defendant with costs.

Judgment for the defendant.

Solicitors: *Osborne-Jones & Redrup; R. C. H. Lim & Co.*